

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of  
United States Steel Corporation  
for Review of Order No. 75-48 (NPDES  
Permit No. CA0002755) of the California  
Regional Water Quality Control Board,  
Los Angeles Region.

Order No. WQ 76-2

BY THE BOARD:

On April 21, 1975, the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) adopted Order No. 75-48 (NPDES Permit No. CA0002755) prescribing waste discharge requirements for the United States Steel Corporation, Torrance Works. Pursuant to Water Code Section 13320, United States Steel Corporation (petitioner) filed a petition with the State Water Resources Control Board (State Board) on May 22, 1975, seeking review of Order No. 75-48 and requesting a hearing.

By a letter dated July 21, 1975, the petitioner was advised that the issues raised by its petition would be decided upon the record without a hearing.

I. BACKGROUND

The petitioner operates an open hearth furnace at its plant in Torrance, California. The mill produces up to 1,000,000 gallons per day of cooling and process wastes which are collected in a storage and treatment lagoon. These wastes are subsequently discharged to an unlined natural watercourse on petitioner's property and thence to a lined flood control channel and ultimately into the Dominguez Channel within the tidal prism.

On December 16, 1974, the Regional Board adopted requirements for the Torrance facility "without prejudice". Subsequently, on April 21, 1975, the Regional Board reconsidered the waste discharge requirements for the Torrance Works and by Order No. 75-48 issued the requirements which are the subject of this petition.

## II. CONTENTIONS AND FINDINGS

The contentions of the petitioner and our findings relative thereto are as follows:

1. Contention: Petitioner's permit should remain in effect for five years following the date of issuance.

Findings: Order No. 75-48 will expire on July 31, 1978 -- some three and one-quarter years after adoption by the Regional Board. The actual requirement of the Federal Water Pollution Control Act <sup>1</sup> (hereafter referred to as the FWPCA) and of federal and state regulations is that NPDES permits may be issued for some fixed term not to exceed five years. [FWPCA Section 402(b)(1)(B); 40 CFR 125.41; Section 2235.7, Subchapter 9, Chapter 3, Title 23, California Administrative Code.] There is no statutory or regulatory requirement which prescribes any minimum duration for an NPDES permit. The duration of the permit issued by the Regional Board in this case plainly falls within the statutory authority of the Regional Board, is not for an unreasonably short period of time, and constitutes a proper exercise of discretion by the Regional Board on permit duration.

2. Contention: During the term of an NPDES permit, federal and state agencies are bound by the permit, as well as

<sup>1</sup> P.L. 92-500; 33 U.S.C. Section 1251, et seq.

the discharger and may not modify the permit while it remains in effect.

Findings: Petitioner failed to support its assertion with either law or substantial argument. Water Code Section 13263(g) makes it plain that a discharge to the waters of the State is a privilege and not a right. That privilege is subject to such requirements and conditions as are necessary to assure protection of water quality. [Water Code Section 13263(a)]. In particular, with respect to NPDES permits, Water Code Section 13381 specifically provides that waste discharge requirements may be modified for cause including change of condition. While we agree that NPDES permit terms, conditions, and requirements should not be modified during the term of an existing permit except in cases of real necessity, there will undoubtedly be exceptional situations which require such modification in order to protect adequately water quality and such modification is statutorily permissible.

3. Contention: More stringent water quality standards adopted after issuance of an NPDES permit should not be made applicable during the term of an existing NPDES permit, with the possible exception of more stringent toxic standards adopted under Section 307 of the FWPCA.

Findings: Water Code Section 13379(f) specifically requires that NPDES permits be adopted which will meet "any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses or to prevent nuisance." The inclusion, by the Regional Board,

of a permit provision advising the petitioner that its permit would be revised in accordance with subsequently promulgated water quality standards is consistent with the foregoing statutory requirement.

4. Contention: All applicable water quality standards should be included in petitioner's permit. Water quality standards should not be incorporated into a permit by reference.

Findings: Incorporation by reference is a time-honored and frequently used device in legal draftsmanship generally because it saves time and avoids repetition. Properly used, incorporation by reference does not operate to the detriment of anyone. "Water quality standards" are objectives for the quality of receiving waters and are established, without reference to any specific discharger, to assure protection of the beneficial uses of the receiving waters. State and federal law establish legal mechanisms for the promulgation of water quality standards and objectives separate from the issuance of waste discharge requirements, although the petitioner, as well as the public at large, may participate in the formulation of water quality standards. [See, for example, FWPCA Section 303; 40 CFR 131; Water Code Section 13170 and Sections 13240-44.] Those standards which apply to receiving waters which may be affected by the discharge of petitioner are readily available to petitioner and we find that the petitioner's contention that water quality standards should be expressly included in its permit is without merit.

5. Contention: Petitioner's permit should contain a provision indicating that the petitioner's compliance with the

terms of the permit shall be deemed compliance with California water pollution control laws, in basically the same manner that FWPCA Section 402(k) provides that permit compliance shall be deemed compliance for purposes of FWPCA Sections 309 and 505 with Sections 301, 302, 306, 307, and 403 of FWPCA except for toxic pollutants.

Findings: The sanctions provided under the Porter-Cologne Water Quality Control Act (Water Code Section 13000 et seq.) are related to violations or threatened violations of waste discharge requirements, or creation of conditions of nuisance or pollution. Assuming that the petitioner has fulfilled all legal requirements in obtaining its permit, compliance with permit requirements will constitute compliance with the Porter-Cologne Water Quality Control Act and we see no need to specify this fact in the petitioner's permit.

The petitioner's contention apparently grows out of the language of Standard Provision 1 of its permit. This provision contains language intended to alert the petitioner to liabilities which may exist regardless of compliance with its permit. It is beyond the power of either the State or Regional Boards to alter those legal liabilities of which the petitioner is warned by Standard Provision 1.

6. Contention: Standard Provisions 4(b), (c), and (d) of petitioner's permit should be modified by the inclusion of the phrase "at reasonable times".

Findings: The Standard Provision under consideration relates to right of entry upon premises to inspect records and monitoring equipment, to copy records and to sample effluent.

Endless clarifying modifications may be added to any statement or requirement and the simplest expression may be turned into a dissertation. The concept of entry, inspection, and sampling "at reasonable times" is inherently implicit without the necessity of explicit expression in the permit. We should add, however, that we consider a "reasonable time" to include, at a minimum, entry, inspection, and sampling during any period of actual facility operation.

7. Contention: Petitioner's permit should contain a provision which recognizes the right to assert force majeure defenses in any enforcement proceeding against the petitioner.

Findings: Essentially the same contention was made to the State Board by Union Oil Company of California in its petition for review of Order No. 74-152 (NPDES Permit No. CA0005053). A thorough analysis of this contention is found in the State Board's Order No. WQ 75-16. The State Board stated in part at page 6 of that order:

"We recognize that influent quality changes, equipment malfunction, facility start up and shut down or other circumstances may sometimes result in the effluent exceeding permit limitations despite the exercise of reasonable care by petitioner. In these cases the petitioner may come forward to demonstrate to the Regional Board that such circumstances exist. The Regional Board will consider these factors in exercising their discretionary authority in determining noncompliance and for enforcement purposes. Regional Board enforcement actions must be reasonably based pursuant to public hearing and due process protections. Limitless facts and possibilities exist regarding upset conditions and each case must be reviewed on its own merits. To limit this discretion of the Regional Board would be to impair seriously the purpose and enforcement provisions of the Federal Water Pollution Control Act."

The Regional Board is not required to include a provision relating to force majeure defenses and did not err in adopting Order No. 75-48 absent such a provision.

8. Contention: Standard Provision 6 in Order No. 75-48 should be altered by substituting "at optimum efficiency" for "...as efficiently as possible...".

Findings: The language of this provision is drawn directly from 40 CFR 124.45(f) which provides:

"...any State...agency participating in the NPDES, must insure that the terms and conditions of each issued permit, provide for and insure...[t]hat the permittee...shall maintain in good working order and operate as efficiently as possible any facilities or systems of control installed to achieve compliance with the terms and conditions of the permit."  
(Emphasis added.)

The language of Standard Provision 6 is proper.

9. Contention: Standard Provision 9 of petitioner's permit should be modified to provide that if the Regional Board revises Order No. 75-48 in accord with any toxic standard established under FWPCA Section 307(a), and if such revision requires the use of discretion, judgment or calculation, the petitioner shall have notice, opportunity for hearing and the right to appeal the Regional Board's action to the State Board.

Findings: We agree that NPDES permit revisions of substance require notice and opportunity for hearing. Our procedures also provide for petition of Regional Board action or inaction to the State Board. (See Water Code Section 13320.)

We do not believe that such procedural matters need be made part of a permit. We believe that the requests of the petitioner are substantially guaranteed by presently applicable statutory language and procedure and by "due process" requirements.

10. Contention: The petitioner asserts that the 290 pound per day (lb/day) COD limit in its permit has no reasonable basis in fact, that the limit is unnecessarily restrictive, and that the limit will be difficult to achieve consistently.

Findings: The petitioner supplied self-monitoring data for COD to the Regional Board. The average discharge for the period August 1974 to May 1975 was 197 lb/day with a standard deviation of 106 lb/day. During this period, there were only two months where the 290 lb/day limit was exceeded. The petitioner has explained that these violations were due to upset conditions caused by a change in suppliers of water treatment chemicals. If these two months are disregarded, the average discharge is 168 lb/day with a standard deviation of 47 lb/day. The petitioner stated in the letter that it is now in compliance and expects to remain so. Based on the prior operation and experience, the petitioner should be able to meet the 290 lb/day COD limit with efficient operation.

11. Contention: The petitioner requests that Order No. 75-48 be amended to specify that the location of monitoring for temperature will be at its property line.

Findings: The petitioner maintains that because the waste flows through open channels for considerable distance

after discharge and before leaving the petitioner's property, additional cooling takes place and that the appropriate location to monitor temperature of the discharge is at the property boundary before the discharge enters navigable waters and after it receives maximum cooling.

Order No. 75-48 does not specify a specific location for temperature monitoring.

At the public hearing held April 21, 1975, the Regional Board agreed that monitoring for compliance with temperature requirements could be conducted at the petitioner's property line. The actual location for monitoring is ordinarily left to the Regional Board staff and the discharger for determination of the most convenient location to obtain representative samples. Under the circumstances of this case, the Regional Board has already agreed to the location desired by the petitioner and we assume that the Regional Board Executive Officer will follow the instructions of the Regional Board.

### III. CONCLUSION AND ORDER

After review of the entire record, and for the reasons heretofore expressed, we conclude that the action of the Regional Board in adopting Order No. 75-48 was proper.

IT IS, THEREFORE, ORDERED that the petition for review  
of Order No. 75-48 is denied.

Dated: JAN 22 1976

/s/ W. W. Adams  
W. W. Adams, Chairman

/s/ W. Don Maughan  
W. Don Maughan, Vice Chairman

/s/ Roy E. Dodson  
Roy E. Dodson, Member

/s/ Jean Auer  
Jean Auer, Member